

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.10.2009

CORAM

The Hon'ble Mr. Justice K.CHANDRU

W.P.No.19466 of 2006

M.Muthusamy .. Petitioner

Vs.

1.The Commissioner and Secretary to
Government (Public Servants)
Police Department, Fort St. George,
Madras □ 9.

2.The Superintendent of Police,
Madurai South, Madurai.

3.The Inspector General of Police,
Law and Order, Madras □ 4.

4.The Deputy Inspector General of
Police, Law and Order,
Madras □ 4. .. Respondents

Petitions filed under Article 226 of The Constitution of India praying to issue a writ of certiorari to call for the records of the first respondent passed in G.O.Ms.No.542 Home (Police VIII) Department dated 11.03.1988 and quash the same, confirming the orders of the second respondent passed in his proceedings No.155, 170/1, (2) S7 dated 01.09.1987.

For petitioner .. Mr.R.Singaravelan

For respondents .. Mr.R.Neelakandan,
Govt. Advocate

ORDER

The petitioner was originally employed as a Grade II Police Constable on 15.07.1982. Thereafter he joined as a Police Constable in Madurai South with effect from 25.10.1984 and he was undergoing training in the Police Recruitment School, Coimbatore. While the petitioner was undergoing training, it was brought to the notice of the Commandant of the 7th battalion, Avadi that he was previously serving in the battalion as Grade II Police Constable with No.1020 and he was treated as deserted from 24.10.1984. He was issued with a show cause notice on 10.04.1985 as to why he should not be discharged from service on the ground that in his verification roll under Column No.10 about his previous employment, he did not disclose his employment in the same Department and was removed from the said Department. The petitioner sent a reply stating that he had informed the fact of his previous employment to the Superintendent of Police, Madurai South at the time of selection.

Since his explanation was not satisfactory and because of his non mentioning of relevant fact, he was terminated from service.

2.The petitioner filed an appeal dated 26.10.1985 to the Deputy Inspector General of Police, Madurai. The said appeal came to be dismissed by the appellate authority by order dated 29.11.1985. The appellate authority has stated that since he was earlier deserted from the said post and got his name included as a Police Constable in Madurai South and he had suppressed a vital information, his probation was rightly terminated. The petitioner thereafter sent a review petition to the third respondent. The third respondent by an order dated 25.12.1986 once again stated that the petitioner was earlier removed from service as a deserter and such a suppression of material fact cannot be allowed. The petitioner once again filed a memorial to the first respondent State. The State Government by G.O.Ms.No.542 Home (Police VIII) dated 11.03.1988 rejected the said request of the petitioner. It was thereafter the petitioner filed a writ petition before this Court in W.P.No.14609 of 1988.

3.In view of the constitution of the Administrative Tribunal, the matter stood transferred to the Tribunal by virtue of Section 29 of the Administrative Tribunals Act, 1985. The Tribunal renumbered the writ petition as T.A.No.712 of 1993. For reasons best known, the matter was not taken up by the Tribunal. Since the Tribunal was abolished, the matter was transferred to this Court and renumbered as W.P.No.19466 of 2006.

4.The contention of the petitioner was that he was not given any opportunity before the termination and there was no necessity to mention the earlier employment as he had resigned from the said post and he was given to understand that his resignation was accepted. Whether the petitioner was in service and resigned from the said service or he was declared as deserted is not an issue for consideration and when once the petitioner applies for the post in the Government and in the verification column, he gives a false statement, it is open to the respondent State to terminate his employment and it does not require any elaborate enquiry because the very non-mentioning of the relevant factor itself can be a ground for termination from service.

5.The Supreme Court vide its judgment in R.Radhakrishnan Vs. Director General of Police and Others (2007 12 Scale 539) in para 10 to 13 observed as follows:

"10. Indisputably, the appellant intended to obtain appointment in a uniformed service. The standard expected of a person intended to serve in such a service is different from the one of a person who intended to serve in other services. Application for appointment and the verification roll were both in Hindi as also in English. He, therefore, knew and understood the implication of his statement or omission to disclose a vital information. The fact that in the event such a disclosure had been made, the authority could have verified his character as also suitability of the appointment is not in dispute. It is also not in dispute that the persons who had not made such disclosures and were, thus, similarly situated had not been appointed.

11. The question came up for consideration before this Court in Delhi Admn. v. Sushil Kumar¹ wherein it was categorically held: (SCC p. 606, para 3)

□3. □ The Tribunal in the impugned order allowed the application on the ground that since the respondent had been discharged and/or acquitted of the offence punishable under Section 304 IPC, under Section 324 read with Section 34 IPC and under Section 324 IPC, he cannot be denied the right of appointment to the post under the State. The question is whether the view taken by the Tribunal is correct in law? It is seen that verification of the character and antecedents is one of the important criteria to test whether the selected candidate is suitable to a post under the State.

Though he was found physically fit, passed the written test and interview and was provisionally selected, on account of his antecedent record, the appointing authority found it not desirable to appoint a person of such record as a Constable to the disciplined force. The view taken by the appointing authority in the background of the case cannot be said to be unwarranted.□

12. Mr Prabhakar has relied upon a decision of this Court in T.S. Vasudavan Nair v. Director of Vikram Sarabhai Space Centre². The said decision has been rendered, as would be evident from the judgment itself, on special facts and circumstances of the said case and cannot be treated to be a binding precedent.

13. In the instant case, indisputably, the appellant had suppressed a material fact. In a case of this nature, we are of the opinion that question of exercising an equitable jurisdiction in his favour would not arise."

6. In the light of the above, the ground raised by the petitioner must necessarily fail and accordingly the writ petition shall stand dismissed. No costs.

09.10.2009

Index:Yes

Internet:Yes

mmi

To

1. The Commissioner and Secretary to
Government (Public Servants)
Police Department, Fort St. George,
Madras □ 9.

2. The Superintendent of Police,
Madurai South, Madurai.

3. The Inspector General of Police,
Law and Order, Madras □ 4.

4. The Deputy Inspector General of
Police, Law and Order,
Madras □ 4.

K.CHANDRU, J.

mmi

W.P.No.19466 of 2006

09.10.2009